

United States Court of Appeals for the Fifth Circuit

No. 22-50965
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 30, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAVIER SANCHEZ-VENTURA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-476-1

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Javier Sanchez-Ventura appeals his sentence on his guilty plea conviction for illegal reentry into the United States in violation of 8 U.S.C. § 1326. Renewing an argument made before the district court, he challenges the district court's application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be sentenced above the

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-50965

statutory maximum of § 1326(a) based on the fact of a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. He raises the issue to preserve it for further review and has filed an unopposed motion for summary disposition, correctly conceding that it is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019).

Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Sanchez-Ventura's motion is GRANTED, and the district court's judgment is AFFIRMED.